

## REAFFIRMATION AGREEMENT

This is the criteria I use in deciding whether or not I will approve a reaffirmation agreement that you have entered into with one of your creditors:

Your discharge in bankruptcy relieves you of any personal obligation to pay debts that are discharged. You are not required to reaffirm any debt or sign any agreement regarding a debt that has been or will be discharged in your bankruptcy. You may decide you want to pay a debt that has been discharged, and you may do so if you want to without "reaffirming" the debt and thereby creating a new binding legal obligation to pay your creditor.

Even though the discharge means you do not have to pay the debts that are discharged, sometimes a creditor will have a security interest in your property, and the creditor may be able to repossess the property if you do not pay the debt. A creditor can have a security interest in real property or in personal property. Often, for example, a merchant who sells you something on credit has a security interest in the purchased items.

If a creditor has a security interest, the creditor can enforce that security interest if the loan is in default. Usually that means the creditor can foreclose or repossess the property that is the subject of the security interest. If the loan is not in default, the creditor cannot foreclose or repossess even if you do not sign a reaffirmation agreement. Just going into bankruptcy is not a default that a creditor can enforce. An enforceable default usually arises out of missed payments, lack of insurance, or something of that nature.

Even then, the creditor can take personal property from your home only after the creditor first obtains a court order and with the help of the county sheriff. This is an expensive procedure for the creditor. You do not have to voluntarily open your home to allow the creditor to repossess your property. You have every right to insist that the creditor act only through a court order if the creditor wishes to repossess.

These considerations are important to me because when I approve a reaffirmation agreement, your creditor may continue to hold you legally responsible for the debt. To protect your rights, the bankruptcy law requires me to inquire why you want to reaffirm a debt, whether you understand what you are agreeing to, whether you are likely to be able to make the payments, whether the payments will be a hardship to you, and whether there is a good reason for you to reaffirm this debt.

I need to know the answers to those questions to help me decide whether to approve your agreement. If your creditor holds some kind of security, I will want to know, What does your creditor have a security interest in? Do you still have the property your creditor has a security interest in? If so, do you want to keep it? Why? How much is it worth? If not, has the creditor filed a dischargeability suit against you? Has your creditor threatened to file a nondischargeability suit against you? Has the deadline for filing such suits run?

If there is no security for the debt, I will want to know why do you want to pay it? What do you think you will get in return? Has the creditor made any promises to you? If so, are they in writing? Do you know what the terms of your agreement are? What is the interest rate? How long will it take you to pay out the debt you are reaffirming?

Thomas B. Donovan  
United States Bankruptcy Judge